IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

ITA No. 4318/MUM/2023
(**Assessment Year : 2013/-14**)

ITA No. 4319/MUM/2023
(**Assessment Year : 2012-13**)

ITA No. 4320/MUM/2023
(**Assessment Year : 2001-02**)

Dy. Commissioner of Income Tax-3(4) 481/2, Aayakar Bhavan, M.K.Road, Mumbai-400020.	Vs.	IDBI Bank Limited, Taxation Cell, IDBI Tower, 22nd Floor, Cuffe Parade, Coloba-400005.
PAN/GIR No. AABCI8842G		
(**Appellant**)	..	(**Respondent**)

Assessee by	Shri. C. Naresh
Revenue by	MS. Madhu Malati Ghosh (CIT-DR)
Date of Hearing	**19/06/2024**
Date of Pronouncement	**06/09/2024**

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

The facts and law applicable in all these three appeals are similar and issues arising are identical. The decision on facts

and law for one appeal for any assessment year would answer the issue involved in the other two years. Hence, all the three appeals are being decided by the common order for the sake of brevity. The facts only in ITA No. 4318/MUM/2023 for the A.Y. 2013-14 are being narrated as under:

ITA No. 4318/MUM/2023
(**Assessment Year : 2013/-14**)

1. The revenue appeal ITA NO. 4318/MUM/2023 for A.Y. 2013-14 has been preferred against the impugned order dated 18.07.2023 passed in Appeal no. NFAC/2012-13/10064663 by the Ld. Commissioner of Income–tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"], wherein learned CIT(A) has partly allowed assessee's appeals.
2. The brief facts under appeal state that the respondent assessee is a bank. Consequent upon the order dated 03.09.2019 passed by this Tribunal in ITA No. 3426/MUM/2018 and 4043/MUM/2018, learned assessing officer, in order to give effect to this order, passed revised assessment order dated 30.09.2021 and granted interest to

assessee bank u/s. 244A at 20.17 crores as against the assessee's claim of Rs. 22.07 crores.

3. Assessee, being aggrieved by the revised order passed by the assessing officer for the reason that the difference of short grant of interest has resulted on account of learned assessing officer not granting interest on the amount of refund due, after adjusting the amount of refund already granted by segregating the refund due, into interest and tax and not granting interest on the total amount of balance refund due of tax. After adjusting the refund granted as against the specific provisions of Section 244A of the Act.

4. Being aggrieved by the impugned order passed by learned CIT(A), department of revenue has approached this Tribunal of the following grounds which read as under:

> *"(i). Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in directing Assessing officer to allow the short grant of interest u/s 244A(1) of the Act as per law by relying on the Hon'ble ITAT's decision in the case of Bank of Baroda ignoring the decision of Hon'ble Division Bench of Delhi High Court in the case of CIT V Indian Farmer Fertilizer Co-operative case (2016) 71 taxmann.com 37 (Delhi) wherein it was held that the law declared in decision of the Supreme Court in Commissioner of Income Tax v. Gujarat Fluoro Chemicals (2013) 358 ITR 291/(2014) 222 Taxman 349/42 taxmann.com 1 is binding and permits no deviation?*
> *(ii) Whether on the facts and circumstances of the case, the Ld. CIT(A) is justified in law in directing Assessing officer to allow the short grant of interest 244A(1) of the Act following the Hon'ble ITAT's decision in the case of Bank of Baroda which is based on the same principle & rationale as held in decision of Hon'ble Delhi High Court in the case of India Trade Promotion Organization (ITPO) vs CIT despite the fact that Hon'ble Supreme Court in Commissioner of Income Tax v Gujarat Fluoro Chemicals [2013] 358 ITR 291/2014] 222 Taxman 349/42 taxmann.com 1*

categorically clarified that it is only that Interest provided for under the statute which may be claimed by an assessee from the Revenue and no other interest on such statutory interest?
(iii) Whether on the facts and circumstances of the case, the Ld.CIT(A) is justified in allowing the assessee's ground whereby it was suggested that for calculating interest u/s 244A(1), the refund earlier granted should be adjusted against interest component and balance if any, should be adjusted against principal refund amount and such net principal refund amount should be considered whereas no such methodology was laid down in any of the decisions on which the Hon'ble ITAT relied on in the case of Bank of Baroda?"

5. In response to the notice issued by the tribunal, learned DR appeared and participated in the proceedings.
6. We have perused the records and heard learned representatives for both the parties.
7. The main points of determination under all the three appeals are as under:
    a. Whether learned CIT(A) is justified in directing the assessing officer to allow the short grant of interest u/s. 244A(1) of the Act?
    b. Whether learned CIT(A) is justified in allowing the assessee's ground whereby it was suggested that for calculating interest u/s. 244A(1), the refund earlier granted should be adjusted against the interest component and balance if any, should be adjusted against the principal refund amount without any methodology?

8. Both the points under determination are interrelated, hence these are being determined together.

9. The learned departmental representative reiterated the grounds of appeal and submitted that the learned CIT(A) is incorrect in directing the learned assessing officer to grant interest under section 244A (1) of the Act.

10. The learned representative for the assessee has vehemently supported the order of the learned CIT(A) and submitted that there is no such methodology laid down under the Act but the guidance may be taken from section 140-A of the Act. Explanation to that section provides that whenever a taxes, fees and interest is payable by the assessee, the amount so paid shall first be adjusted towards the fee, thereafter towards the interest and thereafter should be adjusted towards the tax payable. Therefore, there is a methodology and chronology of adjustment of payment made by the assessee to the income tax department, therefore same methodology and chronology should also be available to the assessee in absence of any contrary specific provision under the Act. Learned AR further submitted that the issue is squarely covered in favour of the assessee by the decision of the coordinate bench for A.Y.

2004-05 dated 08.05.2024 in assessee's own case in DCIT Circle 3(4) V IDBI Bank Ltd. The relevant paras 9 to 11 read as under:

> *"09. We have carefully considered the rival contention and perused the orders of the lower authorities. The issue involved in ground number 1 – 3 of the appeal of the learned AO is that when a refund is due to the assessee which is comprising of tax and interest and when part of that refund amount is granted, whether such a refund so granted is to be adjusted first against interest portion comprising in that refund or tax portion comprising therein. If, the adjustment is made first towards the tax portion, the interest due to the assessee when subsequent amount of refunds are granted, would be less. If the adjustment is made first towards the interest portion, and when the subsequent refunds are granted, the interest portion payable to the assessee would be higher for the simple reason that in that circumstances that tax portion remains intact. This tax portion which remained intact would result into further interest thereon. There is no provision under the income tax act which is shown by either that there is a specified chronology for adjustment of refund granted to the assessee. However it is shown to us that when the tax is payable by the assessee, there is a specific chronology provided under the provisions explanation to section 140A of the act. It provides that where the amount paid by the assessee as self assessment falls short of the aggregate of the tax, interest and fee, the amount so paid shall first be adjusted towards the fee payable, and thereafter towards the interest payable and the balance if any shall be adjusted towards the tax payable. Honourable Delhi High Court in case of India trade promotion Organization versus CIT (2014) 361 ITR 646 in paragraph number 15-16 has held as under:-*
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> > *15. A reading of the aforesaid passage from the decision of the Supreme Court in H.E.G. Ltd. (supra) indicates that it would be incorrect and improper to regard payment of interest when part payment is made as interest on interest. What has been elucidated and clarified by the Supreme Court is that when refund order is issued, the same should include the interest payable on the amount, which is refunded. If the refund does not include interest due and payable on the amount refunded, the Revenue would be liable to pay interest on the shortfall. This does not amount to payment of interest on interest. An example will clarify the situation and help us to understand what is due and payable under Section 244A of the Act. Suppose Revenue is liable to refund Rs. 1 lac to an assessee with effect from 1st April, 2010, the said amount is refunded along with interest due and payable under Section 244A on 31st March, 2013, then no further interest is payable. However, if only Rs. 1 lac is refunded by the Revenue on 31st March, 2013 and the interest accrued on Rs. 1 lac under Section 244A is not refunded, the Revenue would be liable to pay interest on the amount due and payable but not refunded. Interest will not be due and payable on the amount refunded but only on the amount which remains unpaid, i.e., the interest element, which should have been refunded but is not paid. In another situation where part payment is made, Section 244A would be still applicable in the same manner. For example, if Rs. 60,000/- was paid on 31st March, 2013, Revenue would be*

> *liable to pay interest on Rs. 1 lac from 1st April, 2010 till 31st March, 2013 and thereafter on Rs. 40,000/-. Further, interest payable on Rs. 60,000/-, which stands paid, will be quantified on 31st March, 2013 and on this amount, i.e., interest amount quantified, Revenue would be liable to pay interest under Section 244A till payment is made.*
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> *16. The aforesaid manner of computation is not only applicable to cases where Revenue has to pay interest on refund, but is equally applied when an assessee is in default and interest is payable under Section 220(2) of the Act. Interest payable under Section 234B and 234C become part of the demand notice issued under Section 156 and it is on this amount, i.e., the tax payable plus interest payable under Sections 234B and 234C that interest under Section 220(2) is calculated from the date mentioned in the notice of demand till the date of actual payment. Under Explanation to Section 140A(1), it is stipulated where the amount paid by an assessee under self-assessment falls short of the aggregate amount of tax and interest aforesaid, the amount paid shall first be adjusted towards the interest payable and the balance, if any, shall be adjusted towards the tax payable. The interpretation given by us follows the same principle, when Revenue defaults and makes part payment of the amount refundable. The aforesaid interpretation also ensures that the Assessing Officer/Revenue refund the entire amount, which is due and payable, including interest payable under Section 244A. It discourages part payment. There is no other provision under the Act under which an Assessing Officer/Revenue can be made liable to pay interest when part payment is made and the entire amount, which is refundable is not paid to the assessee. Otherwise the Assessing Officer/Revenue can refund the principal amount and not pay the interest component under Section 244A for an unlimited period with impunity and without any sanction, which would amount to granting premium to a non-compliance of law. In the present case, the interest component was withheld for the period ranging between 9 to 13 years.*

010. The above decision has been considered by the coordinate bench in case of bank of Baroda in ITA number 1646/M/2017 dated 20/12/2018 in paragraph number 5 and further relying on the decision of the coordinate bench in Union Bank of India versus ACIT (2016) 72 taxmann.com 348 has also held that the assessee would be entitled for interest on the unpaid refunds in accordance with the principle laid down in the decision of Union Bank of India. The principle that emerges is that in absence of any specific provision of priority of setting of tax refund due and interest refund due out of the total refund when part of the refund is granted to the assessee, it should be treated in a similar manner in which the outstanding tax and interest is to be adjusted when assessee pays part payment of such outstanding sum.

011. The learned AO has raised that Supreme Court in CIT versus Gujarat Flora chemicals (2013) 358 ITR 291 has categorically held that it is only that interest provided for under the statute which may be claimed by the assessee from the revenue and no other interest on such statutory interest is payable. On careful consideration of the above argument we find that it is not the case of the assessee to claim interest on interest or claim of any interest which is not provided in the act. Assessee is merely saying that when out of the total refund due comprising of interest and the tax, if part of the amount is refunded, it should be adjusted in a similar manner in which when part taxes paid are adjusted by revenue against tax and

> *interest. We find that when part taxes are paid by the assessee, it is first adjusted against the interest payable and then against tax due, similarly when the part refund is granted to the assessee, it should be first adjusted towards the outstanding interest and then against the tax payable."*

11. We are in respectful agreement with the above view taken by the co-ordinate bench of this Tribunal in assessee's own case for the A.Y. 2004-05. We accordingly hold that learned CIT(A), in first appeal has rightly allowed the claim of the assessee in directing the assessing officer to examine the computation of refund including interest u/s. 244A of the Act. No fault or any infirmity is found in the impugned order. The impugned order is sustained. The aforesaid points are accordingly determined against the appellant revenue and in favour of the respondent assessee. The appeal is thus, liable to be dismissed.

ITA No. 4319/MUM/2023
(**Assessment Year : 2012-13**)

12. This appeal has been preferred against the impugned order dated 07.08.2023 passed in Appeal no. NFAC/2011-12/10117004. The grounds involved herein are similar except the figures. The common ground has already been considered by us in our conclusive finding arrived at ITA No.

4318/MUM/2023. The same shall apply mutatis mutandis in this appeal.

ITA No. 4320/MUM/2023
(Assessment Year : 2001-02)

13. ITA No. 4320/MUM/2023 for A.Y. 2001-02 has been preferred against the impugned order dated 18.07.2023 passed in Appeal no. NFAC/2000-01/10053729. The grounds involved herein are also similar except the figures. The common ground has already been considered by us in our conclusive finding arrived at ITA No. 4318/MUM/2023. The same shall apply mutatis mutandis in this appeal.

14. In the result, the three appeals ITA no. 4318/MUM/2023, 4319/MUM/2023 & 4320/MUM/2023 are dismissed. The impugned orders dated 18.07.2023, 07.08.2023, 18.07.2023 respectively, stand confirmed. The copy of this order be placed on the records of ITA No. 4319/MUM/2023 and ITA No. 4320/MUM/2023.

Order pronounced on 06.09.2024.

Sd/-	Sd/-
(BR BASKARAN)	**(SUNIL KUMAR SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 06/09/2024

Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai